IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.309 OF 2006

IN

SUMMARY SUIT NO.1642 OF 2006

Jatin Jashwantrai Bhagat ...Plaintiff

v/s

Dayaram Waghji Thaker and ors. ...Defendants

Mr N.C. Parikh i/b M/s Mansukhlal Hiralal and Co. for Plaintiff.

Mr Sanjay Jain i/b M/s Vinod Mistry and Co. for Defendants.

CORAM : D.K. DESHMUKH J.

DATE : 4TH OCTOBER 2006.

P.C. :-

1. There appears to be no dispute that the loan was advanced by the plaintiff to the defendants. The defence of the defendants is that the transaction is a moneylending transaction and therefore, the suit is not maintainable. The leaned counsel appearing for plaintiff relies on a judgment of the learned Single Judge of this Court in the case of Nandram Kaniram and others v/s N.B. Rahatekar, reported in 1994(1) Bom.C.R. 28 to contend that as the plaintiff is not carrying on business of moneylending, he cannot be termed as moneylender. Perusal of the plaint shows that there are no averments made in the plaint showing that though it is a loan, how it does not amount to moneylending transaction. In any case, in my opinion, the defence put up by the defendants cannot be termed as a moonshining defence. The defendants are therefore granted unconditional leave to defend the suit. Written statement to be filed within four weeks from today.

Summons for judgment is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.